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MELAWANGI SDN BHD v. YEO ING KING

HIGH COURT MALAYA, SHAH ALAM
AZIMAH OMAR JC
[CIVIL SUIT NO: 22-1986-2008]
31 DECEMBER 2015

B

TORT: *Defamation – Defamatory statements – Whether defamatory statements referred to plaintiff and published – Whether allegations contained in documents proven – Whether documents published to third parties – Whether defences of justification and qualified privilege available*

C

TORT: *Damages – Defamation – Failure to challenge damages pleaded – Whether sum pleaded ought to be allowed – Whether amount appropriate*

The plaintiff, a private limited company, was a wholly owned subsidiary of Amcorp Group Bhd and had its registered office in the Amcorp Trade Centre
D ('the Trade Centre'). The plaintiff was also one of the lawfully voted members of the joint management committee ('JMC'), managing and maintaining the Trade Centre. The defendant was a self-acknowledged Chairman of the Amcorp Trade Centre Owners and Tenant Association ('ATCOTA'). The defendant, on a self-proclaimed capacity representing the
E tenants and owners of the Trade Centre, had published to third parties three different publication in different dates alleging, *inter alia*, mismanagement, embezzlement of funds, unfair conduct of the Annual General Meeting which led to the voting of the JMC members, abuse of power, oppressive management, cheating, dishonest conduct, attainment of unlawful profits by
F the JMC which expressly included and referred to the plaintiff. In the defendant's fervent attempt to soil the reputation of the plaintiff and the successful candidates of the JMC as well as attempting to call for a re-election, the defendant had published three letters ('the defamatory documents') at different times to numerous third parties. The defamatory documents formed the basis of the plaintiff's cause of action in defamation
G against the defendant. The issues that arose for determination herein were: (i) whether the defamatory documents contained defamatory statements referring to the plaintiff and were published to third parties; (ii) whether there was truth in the defamatory statements to afford the defence of justification for the defendant; and (iii) was the defendant's personal sentiment against the
H plaintiff fell within the arms of the defence of qualified privilege. The defendant, at the eleventh hour, raised an objection on the marking of the defamatory documents.

Held (allowing plaintiff's action with costs):

I **(1)** The utility of a document in an agreed bundle depends on the consensus or agreement of the parties, the rule which is also stipulated in O. 34 r. 2(2)(c) and (d) of the Rules of Court 2012 ('ROC'). The extent of what was agreed between the parties must be fully appreciated, and cannot be

an insidious leeway for the defendant to exploit to catch the plaintiff off-guard. It was the consensus between the parties that they were well aware that the nature of the plaintiff's cause of action was defamation and that the essence of the plaintiff's case was in disproving the statements and proving the falsity of the statements contained in the defamatory document. 'As far as possible' what was agreed between the parties was only to mark the defamatory documents as Part A documents merely to do away with the need to call in the maker of the defamatory documents. (paras 18 & 20)

(2) The contention was raised late or last minute only to allow the defendant to escape liability after the defendant failed to defeat the plaintiff's evidence and contentions. Procedural law cannot be exploited as an underhanded manoeuvre to defeat the ends of justice. Order 1A of the ROC has codified the court's discretion to weigh the overriding interest of justice with the technical compliance of the Rules. Even if there was a technical non-compliance of the Rules (which the court disagreed), such technicality did not outweigh the overriding interest of justice, especially considering the insidious manner in which the technicality was raised. (paras 21 & 26)

(3) The defendant had conceded to the fact that the defamatory statements were indeed referring to the plaintiff and were published. The defendant had failed to challenge the testimony of the plaintiff's witness rebutting the allegations made in the first, second and third letters. Further, the defendant had also failed to tender any evidence to prove the allegations contained in the letters. The plaintiff merely relied on his 'observation' which, in the court of law, was no proof at all. The contents of the defamatory documents were thus found to be defamatory in nature in that it excited contempt, hatred, distrust and the lowering of expectations of any reasonable person of a right thinking society. (paras 31, 40, 42, 59 & 64)

(4) The defendant had also conceded that the defamatory documents were published to third persons wherein the defamatory documents were circulated and received by all owners and tenants of the Amcorp Trade Centre. Besides that, the defamatory documents were also published to the Ministry of Housing and Local Government, Datuk Bandar MBPJ, Commissioner of Buildings (MBPJ), Director General of Ministry of Housing and Local Government and office of the Selangor Menteri Besar. Therefore, the plaintiff had sufficiently proven all the elements for a case of defamation. (paras 67, 69 & 70)

(5) The defendant was unable to prove any measure of truth in his defamatory statements. Hence, the defendant had absolutely failed to prove a defence of justification and should not be accorded the defence of justification. (paras 73 & 74)

(6) The defendant had not exhibited any evidence, or any witnesses to define the constituents of the 'public' in the ATCOTA which shared the same interest, worries and sentiments as the defendant. Neither was there evidence to prove that the defamatory documents were published with the authority to represent the ATCOTA. Hence, the defendant was not in any position to hold the duty to the 'public' to publish the defamatory statements. The publication of the defamatory documents were made to serve his own interest and personal grudge against the plaintiff who was the successful candidate voted, usurping the defendant's own chance to be a member of the JMC. The publication was essentially matters of internal affairs of the plaintiff and the JMC painted to mimic the gloss of public interest. In the circumstances, the defendant had failed to prove the defence of qualified privilege. (paras 79, 81, 82, 83 & 86)

(7) The plaintiff had contended on its reputation and the damage inflicted on its reputation by the defendant's defamatory conducts. In the absence of any challenge by the defendant against the sum of RM5 million pleaded by the plaintiff in general damages, the court allowed the sum as an appropriate amount to be awarded to the plaintiff. (para 90)

Case(s) referred to:

Abdul Rahman Talib v. Seenivasagam & Anor [1966] 1 LNS 5 FC ***(refd)***

Adam v. Ward [1917] AC 309 ***(refd)***

AmGeneral Insurance Bhd v. Sharul Ahmad & Anor [2015] 1 CLJ 532 HC ***(dist)***

Ayob Saud v. TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321 HC ***(refd)***

Capitalcorp Securities Sdn Bhd v. Ab Malek Beh Abdullah [2005] 1 LNS 63 HC ***(refd)***

Cassell & Co, Ltd v. Broome And Another [1972] AC 1027 ***(refd)***

Dato' Seri Mohammad Nizar Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor [2014] 3 CLJ 560 CA ***(refd)***

Datuk Harris Mohd Salleh v. Abdul Jalil Ahmad & Anor [1983] 2 CLJ 211; [1983] CLJ (Rep) 521 HC ***(refd)***

Hebditch v. Macilwaine [1894] 2 QB 54 ***(refd)***

Jaafar Shaari & Siti Jama Hashim v. Tan Lip Eng & Anor [1997] 4 CLJ 509 SC ***(refd)***

Keith Richard Judd v. Suppayah Krishnan [2015] 1 LNS 856 HC ***(refd)***

Khalid Yusoff v. Pertubuhan Berita Nasional Malaysia (Bernama) & Ors [2014] 8 CLJ 337 HC ***(refd)***

Knupffer v. London Express Newspaper Limited [1944] AC 116 ***(refd)***

Lin Kai Lam & Ors v. Lin Kai Wing & Anor [2014] 1 LNS 1769 HC ***(refd)***

Lionel Edwards Ltd v. State of West Bengal AIR 1967 Cal 191 ***(refd)***

MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun [2002] 3 CLJ 577 FC ***(refd)***

Reynolds v. Times Newspapers Ltd [2001] 2 AC 127 ***(refd)***

S Pakianathan v. Jenni Ibrahim & Another Case [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233 SC ***(refd)***

Shah Latiff Sdn Bhd & Satu Lagi v. Karam Singh Walia & Yang Lain [2012] 1 CLJ 542 HC ***(refd)***

Sivabalan P Asapathy v. The New Straits Times Press (M) Bhd [2010] 7 CLJ 885 HC ***(refd)***

Syarikat Bekalan Air Selangor Sdn Bhd v. Tony Pua Kiam Wee [2015] 8 CLJ 477 FC ***(refd)***

Tan Sri Dato' Vincent Tan Chee Yioun v. Hasan Hamzah & Ors [1995] 1 CLJ 117 HC ***(refd)***

The Institute of Commercial Management United Kingdom v. The New Straits Times Press (Malaysia) Bhd [1993] 2 CLJ 365 HC ***(refd)***

Tun Datuk Patinggi Haji Abdul Rahman Ya'akub v. Bre Sdn Bhd & Ors [1995] 1 LNS 304 HC ***(refd)***

Legislation referred to:

Defamation Act 1957, s. 8

Rules of Court 2012, O. 1A, O. 34 r. 2(2)(c), (d)

For the plaintiff - Dhanaraj Vasudevan & Devandra Balasingam; M/s Kamil Hashim Pury & Lim

For the defendant - CY Ong; M/s Douglas Yee

Reported by S Barathi

JUDGMENT

Azimah Omar JC:

Background Facts

[1] The present case in essence is a case for defamation revolving defamatory statements published by a disgruntled defendant who had published statements to third parties against the good name of the plaintiff, merely on his negative personal sentiments which arose because the plaintiff was voted to be a member of a Joint Management Committee and/or body to manage and maintain a trade centre building instead of the defendant himself.

[2] The plaintiff claims that the alleged defamatory statements by the defendant is seriously detrimental to the plaintiff as the plaintiff is also a developer company and a subsidiary company of one of the most prominent corporate conglomerate in Malaysia namely Amcorp Group Berhad. Amcorp Group Berhad is the main shareholder in numerous Bursa listed companies such as AMMB Holdings Berhad (Amcorp Group), ECMLIBRA (ECM Libra Financial Group Berhad, RCE Capital Berhad and Amcorp Properties Berhad. These companies except Amcorp Property are involved in the financial industry. Amcorp Property is a company involved in the property and engineering industry.

[3] Considering the plaintiff's eminence and status, the plaintiff alleged that such defamatory statements have severely tarnished the plaintiff's reputation, trade, image, integrity and good name in the right minds of the general public. Thus, in its prayer 36 of the amended statement of claim, the plaintiff claims *inter alia* for the following reliefs:

(a) an injunction to prevent the defendant from publishing or distributing similar defamatory statements;

(b) the defendant publish a complete and unconditional withdrawal of the publication of the defamatory statements in two major newspapers, one in English and another in Bahasa Malaysia, within the terms agreed by the plaintiff's solicitors;

(c) general damages amounting to RM5,000,000 from the defendant arising from the publication of the defamatory statements;

(d) interest at a rate of 8% annually on the total amount of judgment sum from the date of filing this action until the date of realisation at rate and time the court deems fit;

(e) damages for libel and/or publishing with malice;

(f) interest on the damages at a rate of 5% annually from the date of publication of the resignation letter up to the date of payment.

[4] This court must emphasis here that during the whole course of the trial, when giving his evidence to defend the action, the defendant has done very little to none at all to disprove the factum that indeed the defendant had published defamatory statements. Instead, by and large, the defendant has merely and even desperately attempted to absolve himself from liability on the defences of justification and qualified privilege as well as a minor technicality in which the defendant attempted to fallibly exploit to eschew away from dealing with essential issues and determinations relevant to the present case.

[5] The plaintiff, Melawangi Sdn Bhd ("plaintiff") in this case is a private limited company incorporated in Malaysia under the Companies Act and a wholly owned subsidiary of Amcorp Group Berhad. The plaintiff has its registered office in the Amcorp Trade Centre ("Trade Centre") and is also one of the lawfully voted members of the Joint Management Committee ("JMC") managing and maintaining the same Trade Centre. The same JMC has already been acknowledged of its validity by MBPJ upon the issuance of the Certificate of Establishment.

[6] The defendant Yeo Ing King ("defendant") is merely an alleged self-acknowledged Chairman of the Amcorp Trade Centre Owners & Tenant Association ("ATCOTA"), a society alleged (though not proven) to represent the owners and tenants of the Trade Centre. The defendant is interestingly one of the unsuccessful candidates who were not voted to be a member of the JMC.

[7] For the sake of brevity and simplicity, this court opines that it is unnecessary to go at lengths into all the facts that led to the publication of the defendant's defamatory statements. Suffice that this court addresses only the relevant facts in determining the defamatory nature of the statements and also any facts and/or evidence which is relevant to determine the truthfulness

or falsity of the defendant's defamatory statement as to ascertain whether the defendant should be afforded their defence of justification and qualified privilege.

[8] Succinctly, the defendant on a self-proclaimed capacity representing the tenants and owners of the Trade Centre, has published to third parties three different publications on different dates alleging *inter alia*, mismanagement, embezzlement of funds, unfair conduct of the Annual General Meeting which led to the voting of the JMC members, abuse of power, oppressive management, cheating, dishonest conduct, attainment of unlawful profits by the JMC which expressly includes and refers to the plaintiff. The allegations were utterly serious that even a series of meetings were called with the Yang Bahagia Dato Bandar, Commissioner of Buildings, and the Majlis Bandaran Petaling Jaya ("MBPJ") in which MBPJ has called for an Extraordinary General Meeting. In the defendant's fervent attempt to soil the reputation of the plaintiff and the successful candidates of the JMC as well as attempting to call for a re-election, the plaintiff has published three different publications ("defamatory documents") at different times to numerous third parties. These defamatory documents include:

(i) A letter entitled "AUDITED ACCOUNTS OF AMCORP TRADE CENTRE - HOUSEOWNERS' ACCOUNT" dated 2 June 2008 (see pp. 61-69 of Bundle B1)

(ii) A letter referred to as "PROBLEMS AT AMCORP TRADE CENTRE" dated 6 June 2008 (see pp. 62-66 of Bundle B1)

(iii) A letter referred to as "EXTRA-ORDINARY GENERAL MEETING OF JOINT MANAGEMENT BODY ON SUNDAY 19 OCTOBER 2008 AT 2PM AT PJ CLUB" dated 1 October 2008 (see pp. 78-80 of Bundle B1)

[9] These defamatory documents are the basis of the plaintiff's cause of action in defamation in the present case.

[10] For clarity, this court shall determine the present case with the following issues:

(i) Does the defamatory documents contain defamatory statements referring to the plaintiff and were published to third parties?

(ii) Was there any extent of truth in the defamatory statements to afford the defence of justification for the defendant?

(iii) Is the defendant's personal sentiment against the plaintiff falls within the arms of the defence of qualified privilege?

A **Preliminaries**

The Defendant's Late (Last Minute At Eleventh Hour) Contention On The Marking Of The Defamatory Documents

[11] Now, as prelude to the substantive discussion to follow, this court
B shall first cast away all shade of confusion or doubt brought forth by the defendant's counsel in the defendant's deliberate and latent contention to defeat the plaintiff's case through a technicality in the marking of the defamatory documents.

[12] This court is verily aware that the defamatory documents were
C marked/included as Part A documents. However, this court is also aware that all parties, especially the defendant is verily aware that the agreement to mark the defamatory documents as Part A documents are merely for the sake of brevity and dispensing the need to call the maker of the defamatory documents. At no point in time were the parties in any daze or confusion that
D preposterously, the plaintiff agreed to defeat its own case so early in the pre-trial case management stage, in agreeing to the truth of the content of the defamatory documents. It is resoundingly clear to all the parties (especially the defendant) as well as this court, that the sheer essence of the plaintiff's case for defamation is the falsity of the contents of the defamatory
E documents. This court is also very well minded that the defendant has not made any objection all throughout the marking of the documents, and only malevolently raising this contention at the eleventh hour, after eschewing from and failing to address and defeat the substantive determinations and contentions of the plaintiff.

F **[13]** In the defendant's desperate bid to defeat the ends of justice by technicality, the defendant has referred to the case of *AmGeneral Insurance Bhd v. Sharul Ahmad & Anor* [2015] 1 CLJ 532.

[14] Be that as it may that *Sharul Ahmad*'s case has held that "It is trite that documents in part A cannot be disputed as to their content and authenticity"
G it is verily pertinent to dig deeper into the basis and reasoning behind this decision.

[15] The High Court in *Sharul Ahmad* in finding the above, has generously referred to the decision of Gopal Sri Ram JCA (as he then was) in the case of *Jaafar Shaari & Siti Jama Hashim v. Tan Lip Eng & Anor* [1997] 4 CLJ 509:

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> Having considered the arguments of counsel on both sides and the authorities cited by them, I am of opinion that the following propositions may be taken as well-settled:
>
> (1) Whether the contents of a document that has been included in an
I agreed bundle may be used by either party to prove or disprove a fact in issue depends entirely upon the terms of the agreement between the solicitors having conduct of an action. If by their agreement they dispense with formal proof and also agree to the truth of the contents of a particular document, then its contents

> may be relied upon either side to establish or to disprove a fact in issue. On the other hand, if the agreement is only to forgo proof of the making of the document, then, the contents may not be so used. See, *Yew Lean Finance Development (M) Sdn Bhd v. Tan Gin Thong* [1985] CLJ 826 (Rep); [1985] 1 CLJ 299.

[16] The High Court in *Sharul Ahmad* even goes to the extent to include the following qualification in making its decision:

> At the pre-trial case management date pursuant to O. 34 r. 2 of the Rules of Court 2012, both learned counsel had agreed that these agreed documents are to be categorized as a part A documents meaning that these documents and its contents are to be admitted as evidence.

[17] This court does not intend to contra the above decisions. However, it is pertinent to understand further that the underlying ground in which the above precedents have decided, does not at all support the defendant's insidious tactics in technicality.

[18] As astutely held by the above precedents, the utility of a document in an agreed bundle depends on the consensus or agreement of the parties. Understandably so, even the new Rules of Court 2012 in O. 34 r. 2(2)(c) and (d) stipulates the same sentiment that the marking of a document in Part A is based on the agreement of the parties. Nowhere in the Rules that it states that marking of Part A document entails an automatic assumption that the parties have agreed to both the authenticity and truth of a document. It is only appropriate and just that the court must still ascertain the underlying agreement between the parties during the entire course of the case. The Rule above reads:

> (c) the period within which the parties are to file a bundle of all documents that will be relied on or referred to in the course of the trial by any party, including documents referred to in the witness statement of a witness;
>
> (d) the documents of the bundle of documents referred to in subparagraph (c) shall be agreed on between all parties as far as possible and this bundle of agreed documents shall be filed by the plaintiff and marked as Part A;

[19] Be that as it may that the High Court in *Sharul Ahmad* has decided that it is trite that Part A documents cannot be tested for the truth of its contents, this trite rule only applies to cases alike or similar *Sharul Ahmad*, in which parties have agreed to not only the authenticity, but also the truth of the contents of the documents.

[20] This is exactly where the present case is distinguishable from the trite rule decided in *Sharul Ahmad*. The extent of what was agreed between the parties must be fully appreciated, and cannot be an insidious leeway for the defendant to exploit to catch the plaintiff off-guard. It is reiterated that it is the consensus between the parties that they are well aware that the nature of

A the plaintiff's cause of action is defamation and that the essence of the plaintiff's case is in disproving the statements and proving the falsity of the statements contained in the defamatory documents. "As far as possible" what was agreed between the parties is only to mark the defamatory documents as Part A documents merely to do away with the need to call in the maker
B of the defamatory documents.

[21] The second distinguishing factor is the ill-intent in which the contention was latently raised by the defendant. This contention was raised late or last minute only to allow the defendant to escape liability after the defendant has failed to defeat the plaintiff's evidences and contentions. It was
C not raised as a genuine contention to put the defendant's case to withstand the course of trial. It was merely a tactic to allow the defendant to sidestep away from the crosshair of the plaintiff's utterly proven case.

[22] The desperate stratagem employed by the defendant in keeping absolute silence on the issue of the documents marking, and only contending
D on the marking at the final hour is utterly insidious. The contention is conspicuously latent, and to an abject extent deliberate, just to afford a minor technicality in the defendant's own *mala fide* conduct, to attempt to gain a footing for a failing and untenable defence. This court has no reservations to deem such deliberate latent technical contention an appalling manoeuvre to
E merely defeat the ends of justice with an otherwise dreadfully incredulous defence.

[23] Painstakingly, the defendant also referred to the Indian case of *Lionel Edwards Ltd v. State of West Bengal* AIR 1967 Cal 191 where the court has held the following:

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> Documents are either proved by witness or marked on admission. When it is marked on admission without reservation, the contents are not only evidence but are taken as admitted the result being, the contents cannot be challenged either by way of cross-examination or otherwise …

G **[24]** The above decision is sound in law, but however, owing to the obvious nature of the plaintiff's case and the fact that all the while the defendant has never raised any objections against the documents marking, it is patently clear that all parties were well aware of the plaintiff's reservation against the truth of the contents of the defamatory documents.

H **[25]** The sheer fact that the defendant has never raised any objection since the case management stage until the culmination of the agreed bundle is an outright proof that even the defendant is aware of and acknowledges that there is no doubt to the plaintiff's case that the plaintiff never agreed to admitting the truth of the content of the defamatory documents. It is
I thoroughly known, and agreed by all parties, without even a spec of confusion, the essence of the plaintiff's case is in the proving of the falsity of the defendant's defamatory statements. This is the agreement between

parties. This is the consensus and *status quo*. The parties have consciously and mutually agreed to the insertion of the defamatory documents in Part A merely to forego the need to call in the maker of the defamatory documents but with the obvious reservation that the plaintiff intends to prove the falsity of the content of the defamatory documents.

[26] In any case, this court is not about to stand idle while the defendant is allowed to employ such insidious tactics to defeat justice by technical means. As much as procedural law is an important essence of the law, the same procedural law cannot be exploited as an underhanded manoeuvre to defeat the ends of justice. Order 1A of the Rules of Court 2012 has since the Rules' inception codified the court's discretion to weigh the overriding interest of justice with the technical compliance of the Rules. And it is vividly clear in the present case, that even if there is any technical non-compliance of the Rule (which this court disagrees) such technicality does not outweigh the overriding interest of justice, especially considering the insidious manner in which the technicality was raised.

[27] Thus, it is this court's preliminary finding that this latent, deliberate, malicious and insidious contention by the defendant shall ultimately and obviously fail.

Do The Defamatory Documents Contain Defamatory Statements Referring To The Plaintiff Which Were Published To Third Persons?

[28] Now, it is pertinent to highlight the mechanism of a case of defamation. In proving defamation, the onus of the plaintiff is merely to prove that the defendant's statements were defamatory (in that it tarnishes the image or repute of the plaintiff), the defamatory statements refer to the plaintiff and the same defamatory statements were published to third parties. At the stage of the plaintiff's onus, the court is not concerned on the truthfulness of the defendant's defamatory statements. It suffices that the plaintiff proves all of the above to make a case of defamation (see *Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321).

[29] Upon proving the elements of defamation, then the onus shifts to the defendant to set up a defence to prove an extent of truth to his defamatory statements which would justify or qualify the defendant's conduct of publishing the defamatory statements. (See: *Ayob Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321; *S Pakianathan v. Jenni Ibrahim & Another Case* [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233; *Abdul Rahman Talib v. Seenivasagam & Anor* [1966] 1 LNS 5; [1966] 2 MLJ 66).

[30] A popular misconception in a case of defamation is that the truth of the defamatory statement would negate the fact that the statements were defamatory. This is altogether an inaccurate depiction of a case of and defence against a defamation case. The truth of the statements would not in fact defeat the fact that the statements were defamatory. The truth of the statements would instead justify or afford an excuse or a defence for the

A defendant's conduct of publishing the defamatory statements. Publishing a truthful defamatory statement is lawful and excuses the publication of the same defamatory statement. However the publication of defamatory statements which are false, and devoid of any evidential proof or truth is indeed unlawful and would put the publisher of the defamatory statements
B in liability of a defamation action.

[31] It is also pertinent to note that the defendant in his submission in reply has conveniently conceded and admitted to the fact that the defamatory statements were indeed referring to the plaintiff and were published.

C **[32]** Also as a preliminary finding, this court shall address another fallible and desperate contention by the defendant in attempting to disprove the plaintiff's case in proving the defamatory nature of the statements. In the defendant's misguided defence in his submission in reply, it was contended that the tangent in which the plaintiff sought to prove that the defamatory nature of the defendant's statements were inherently incorrect (in that the
D sole basis of proving defamatory meaning is that the statements were untrue and unsubstantiated) and thus, the plaintiff has allegedly failed to prove the defamatory nature of the defendant's statements. This misguided contention was repeated thrice to all of the three defamatory documents. It is reiterated that this contention is utterly misguided and a total misconstrue of the
E obvious case of the plaintiff. The plaintiff has at length in its main submission and submission reply submitted on the fact that the defamatory documents were in its natural meaning or by innuendo is defamatory against the good name of the plaintiff. The plaintiff's case is not solely hinged on the falsity or absence of substantiation of the defamatory statements. Not at any
F moment in time that the plaintiff has applied the wrong test in determining the defamatory nature of the defendant's statements.

[33] Furthermore, the fact that a large majority of the defendant's defence rests on this sheer erroneous contention, adds further proof to the fact of a total absence of a defence and that the defendant is desperately grappling for
G any sort of grip to hold onto an utterly failing defence.

[34] Having the above in mind, this court shall proceed to ascertain whether or not the defamatory documents indeed contain statements which defame the plaintiff.

H **[35]** As correctly pointed out by learned counsel for the plaintiff, the following precedents have succinctly laid down the test in determining the defamatory nature of statements.

[36] In the case of *Keith Richard Judd v. Suppayah Krishnan* [2015] 1 LNS 856 the High Court has accurately encapsulated the applicable test:

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> [22] As regards the meaning of defamatory words, the test and evaluation to be taken to determine whether the words are defamatory has been explained in the case of *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461 where the judge said this:

> In my judgment, the test which is to be applied lies in a question: do the words published in their natural and ordinary meaning impute in the plaintiff any dishonourable or discreditable conducts or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory.

[23] The trial Judge has to evaluate the ordinary and natural meaning of the words either by its literal meaning, implied or by inference in order to determine whether those words are defamatory. This is also mentioned in the same case as follows:

> The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be part of ordinary and natural meaning of words (see: *Lewis v. Daily Telegraph Ltd* [1963] 2 All ER 51). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words.

[24] Further consideration to be made on this matter is whether the words had expose the plaintiff to hatred, ridicule or contempt in a mind of a reasonable man or would lower the plaintiff in the estimation of right thinking members of the society. This principle of law has been laid down in numbers of authorities and one of which is the case of *Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v. Bre Sdn. Bhd & Ors* [1995] 1 LNS 304 where the judge said this:

> As to whether the words complained of in this case were capable of being and were in fact, defamatory of the plaintiff, the test to be considered is whether the words complained of were calculated to expose him to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower the plaintiff in the estimation of right-thinking members of society generally (see *JB Jeyaretnam*) Mohamed Azmin J (as he then was) in *Syed Husin v. Sharikat Percetakan Utusan Melayu Bhd & Anor* [1973] 1 LNS 146; [1973] 2 MLJ 56 at p. 58 said:
>
> > Thus, the test of defamatory nature of statement is its tendency to excite against the plaintiff the adverse opinion of others although no one believe the statement to be true. Another test is would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? The typical type of defamation is an attack upon the moral character of the plaintiff attributing crime dishonestly, untruthfulness, ingratitude or cruelty.

A [25] In the same case, the judge further explained that what is important is whether the words complained of has the tendency to lower the plaintiff in the estimation of those to whom the words were published. The judge in that case said this:

> Words could still be defamatory even if they did not really lower
B a plaintiff in the estimation of those to whom they were published. The law looks only to its tendency (see *JB Jeyaretnam v. Goh Chok Tiong*: *Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Bhd & Anors*).

[26] Apart from this, it is obvious that the parties involved will give their
C own interpretation as to the ordinary and natural meaning of the said words complained of but the task is on the shoulder of the trial judge to evaluate and determine whether those words are defamatory. Lord Diplock LJ in the case of *Slim and Others v. Daily Telegraph, Ltd and Another* [1968] 1 All ER 497 has this to say:

> Where as in the present case, words are published to the millions
D of readers of a popular newspaper, the chances are that if the words are reasonably capable of being understood as bearing more than one meaning, some readers will have understood them as bearing one of those meanings and some will have understood them as bearing others of those meanings. But none of this matters. What does matter is what the adjudicator at the trial
E thinks is the one and only meaning that the readers as reasonable men should have collectively understood the words to bear. That is "the natural and ordinary meaning" of words in an action for libel.

[27] Next, the test to determine as to whether the words are defamatory
F is an objective test as stated in the Court of Appeal case of *Keluarga Communication Sdn Bhd v. Normala Shamsudin & Another Appeal* [2006] 2 CLJ 46; [2006] 2 LJ 700, as follows:

> At the outset we would state that test to be applied when considering whether a statement is defamatory of a plaintiff is well
G settled in that, it is an objective one in which it must be given a meaning a reasonable man would understand it and for that purpose, that is, in considering whether the words complained of contained any defamatory imputation, it is necessary to consider the whole article.

H **[37]** As a *simpliciter*, it is incumbent for this court to ascertain through an objective evaluation, if the defendant's statements has a tendency to influence reasonable third persons receiving the statements, to impute adverse opinions against the plaintiff and "expose him to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower the plaintiff in the estimation of right-thinking members of society".

I

The Contents Of The Letter Entitled "Audited Accounts Of Amcorp Tradecentre – Houseowners' Account" ("First Letter") Is Indeed Defamatory

[38] The first baseless defamatory allegation thrown by the defendant is that since Melawangi's membership in the JMC, the JMC's deficit has grown exponentially. This defamatory meaning that the plaintiff has mismanaged the Trade Centre, can be understood in the literal and ordinary meaning of the following excerpt of the letter:

> The management funds as at 31 March 2008 was a deficit, and has been a deficit since 2001. After year 2002, when Melawangi Sdn Bhd took over as Manager, the deficit grew by leaps and bounds. It is also strange that they did not make any attempt to the deficit with owners [who have direct interest in the property] and ATCOTA - even though owners have requested it many times to meet them.

[39] There is no doubt here that this statement is thoroughly defamatory. And for the sake of the later discussion of the defendant's failed defences, this court must highlight that the plaintiff *via* its witness have proven the malicious and false nature of this first allegation. It has already been explained at length by PW1 that the allegation made by the defendant was a convoluted misinterpretation of the deficit. The actual truth behind the deficit is that the deficit is not caused by any fault of the plaintiff. The plaintiff took over management in 1998, at the frontier of the 1998 Asian Financial Crisis which saw the Asian economy worldwide turned for the worst in history. Owing to the crisis, many owners and tenants have defaulted payments of service charges. In the plaintiff's generosity, the plaintiff has actually given a discount on the service charges since year 2000 which has allowed the tenants and owners to save a collective amount upwards to RM13 million. Obviously with such immense savings, there will be a shortfall. And in due diligence, the plaintiff has incepted the now famous Amcorp Mall Weekend Flea Market to reduce the deficit to great success. It is patently clear here that the deficit was deceitfully painted by the defendant to paint the plaintiff in a negative light. The deficit might seem negative in an isolated evaluation of the accounts. However, in looking at all the relevant facts causing the deficit, it is clear that the deficit is in no way, shape or form the fault of the plaintiff.

[40] Furthermore, it is verily pertinent to note that this part of the plaintiff's testimony was never put under material, effective, or any cross-examination at all by the defendant. The plaintiff's witness' testimony on this part remains utterly unchallenged through the whole procession of the cross-examination. As was found earlier, the defendant really has no rebuttal against the contention and explanation of the plaintiff. Thus, such failure to cross-examine amounts an acceptance and admission of the plaintiff's witness' testimony. (See *Capitalcorp Securities Sdn Bhd v. Ab Malek Beh Abdullah* [2005] 1 LNS 63; *Lin Kai Lam & Ors v. Lin Kai Wing & Anor* [2014] 1 LNS 1769).

[41] The second baseless allegation thrown by the defendant is that the plaintiff has abused, mismanaged, the JMC funds by unnecessarily employing a large number of staff which most of the time were not carrying out their duties and were always unreachable. This defamatory statement can be understood through the literal and ordinary meaning of the following excerpt of the letter:

> Melawangi Sdn Bhd employed large number of staff. We suspect many of these are not solely looking after the interests of Amcorp Trade Centre … Their managers are also often not in office when owners look for them … there is no need for so many staff especially when most of the services have been outsourced).

[42] Unsurprisingly at this juncture, the defendant himself in his testimony has readily admitted that he has no proof at all to these allegations, and merely relied on his "observation" which in the court of law, is no proof at all. The defendant in fact readily admitted that there is absolutely nothing in the bundle to prove his allegations.

[43] The third allegation against the plaintiff was that the plaintiff has unlawfully and criminally misappropriated the JMC funds to send all of its staff to Shanghai for a holiday. The allegation is specific to mention that "ALL" of the plaintiff's staff, with not even one staff spared from this supposed Shanghai holiday. This baseless allegation can be inferred in the literal and ordinary meaning of the following excerpt:

> Management of a property on behalf of owners is not profiteering … Perhaps you wish to check whether it is true that Melawangi Sdn Bhd sent ALL staff [including plumbers, clerical, etc] to Shanghai for a holiday – using the excessive management fees collected.

[44] Of course, unsurprisingly, the defendant has not adduced a single spec of evidence in court to prove the above allegation.

[45] The fourth allegation against the plaintiff was that the plaintiff has misappropriated the JMC funds to employ staff to cater to certain other projects of other Amcorp Group of Companies. This can be understood in the literal and ordinary meaning of the following excerpt of the first letter:

> We suspect many of these are not solely looking after the interests of Amcorp Trading Centre as often their staff were seen to handle other property sales and matters of other Amcorp Group of companies.

[46] Unsurprisingly still, the defendant has readily admitted that he has no proof or even any knowledge of any other "projects" that the plaintiff was engaged in:

> Q : How many projects was the Plaintiff doing at the time?
>
> A : I do not know

[47] Resoundingly here, there is no doubt whatsoever that the contents of the first letter above are riddled with defamatory statements which were never proven and substantiated by the defendant.

The Contents Of The Letter Referred To As "Problems At Amcorp Trade Centre" ("Second Letter") Is Indeed Defamatory

[48] The first allegation against the plaintiff in the second letter is that the plaintiff has abused, unlawfully and criminally misappropriated the fees collected from the Weekend Flea Market *vide* sub-contractors. This baseless allegation can be understood in the literal and ordinary meaning of the following excerpt:

> The revenues from rental of the week-end flea market huge. There are nearly 200 stores. Please ensure that all incomes are received and the spaces are not let out through sub-contractors.

[49] Against this allegation, the plaintiff has testified *via* PW1 that this allegation is utterly baseless and that all of the fees revenues received from the weekend flea market have been properly accounted for and audited. This court highlights that the defendant has also accepted and admitted this testimony by PW1 in failing to challenge the testimony in cross-examination.

[50] The second allegation in the second letter is that the defendant speculates that the plaintiff will unfairly deprive the owners and tenants off of the actual size of space according to the strata title (when issued).

[51] This defamatory speculation can be understood in the literal and ordinary meaning of the following excerpt:

> Melawangi Sdn Bhd are the property developer of the complex. When the strata titles are out, a lot of unit owners will find that the actual spaces they have according to the strata titles are LESS than what they had paid for. (Melawangi Sdn Bhd, are in possession of the strata titles and they have chosen to keep quiet about it instead of clearing the problem and billing unit owners on the actual strata title floor space). This problem is now unfairly passed on the JMC.

[52] Again, the unchallenged testimony of PW1 clearly blows this baseless allegation out of the water. It was admitted and accepted by the defendant that the JMC in actuality has never dealt with the size differences. It is further admitted and accepted that the plaintiff rightfully so, has paid out the size difference (where short), and was paid by the owners for the size difference (where in excess). In fact it was even admitted and accepted by the defendant, that the two lots held by IK Yeo Holdings have refused to pay for the excess area gained.

[53] More pertinently in the above allegations, it was readily admitted by the defendant himself that he has no evidence at all to prove all of the allegations in the second letter in its entirety.

> Q : Were there supporting documents with these 5 pages at 62-66 of Bundle B1?
>
> A : No documents.

[54] Thus, again this court finds that there is no doubt to the defamatory nature of the contents of the second letter.

The Contents Of The Letter Referred To As "Extra-ordinary General Meeting Of Joint Management Body On Sunday 19 October 2008 At 2pm At PJ Club" ("Third Letter") Is Indeed Defamatory

[55] There are four main defamatory allegations in the third letter. The first allegation being the allegation that the plaintiff was elected to become a member of the JMC by illegitimate means due to the plaintiff's domination, ineffectiveness, lack of transparency, accountability and fairness. This can be understood in the literal and ordinary meaning of the following excerpt:

> I have been appointed to organise the above by the Commissioner of Buildings (COB), MBPJ … after repeated complaints/representations on the 'doubtful legitimacy' of the 1st Meeting and ineffectiveness of the Joint Management Committee (JMC) elected therein due to the continuing 'domination' by the Developer/Managing Agent (Melawangi) and 'lack' of Transparency, Accountability and Fairness!

[56] The second allegation was that the plaintiff has dishonestly manipulated the voting process in that they have fooled owners to sign blank proxy forms to put in the plaintiff's staff to vote to the plaintiff's favour. This can be understood in the literal and ordinary meaning of the following excerpt:

> Regrettably since only they have contact information on all unit owners, they "manipulated" by "soliciting" unsuspecting owners who could not attend to give them blank proxy forms to enable them to use their own staff and/or associates to attend on their behalf. They even pre-arranged nine (9) nominees - out of twelve (12) positions - to stand in the JMC election and used their proxies to vote these 9 in. Fortunately, they did not filed all 12, thus leaving 3 of our nominees successful; plus one automatic representative from the Developer to complete the Committee. Many owners present sought clarifications re proxy status, but was ignored and we were most disappointed on the outcome and feared for the worst.

[57] The third allegation was that the plaintiff has gained secret and unlawful profits in abuse of their position in the JMC *vide* lucrative service contracts with other key members of the JMC. This can be understood in the literal and ordinary meaning of the following excerpt:

> We have good reasons to believe that this is so because several key JMC members have lucrative service contracts with the Developer/Managing Agent and they have a majority.

[58] The fourth allegation was that the plaintiff has dishonestly and deceitfully forecasted deficits merely for the reason to deliberately increase the maintenance charges payable to the JMC. This can be understood in the natural and ordinary meaning of the following excerpt:

They continue to forecast DEFICITS, yet the only remedy appears to be INCREASING MAINTENANCE CHARGES!!! Instead of cutting costs and enchancing A&P incomes.

[59] By and large the defendant has failed to tender a single shred of evidence to prove all of the above allegations in the third letter. In fact, the testimony of PW1 disproving all of the above allegations in the third letter was never put to any real challenge at all. PW1's testimony simply was not challenged *via* cross-examination. Thus, this court has no reservations to find that the defendant has admitted and accepted PW1's evidence disproving the allegations raised in the third letter.

[60] PW1 has explained that the election of the JMC was legitimate and was in total compliance of the law. It was further testified that all of the candidates were of prominent professional standing, verily fit to hold membership in the JMC. In fact, upon review by the MBPJ, the MBPJ was fully satisfied with the legal compliance and legitimacy of the voting in which the MBPJ has issued a certificate of establishment to the JMC.

[61] Against the allegation of the use of proxies, it was explained by PW1 that as what was recorded in the minutes of the AGM, all of the owners that have given proxies for the first AGM were independently verified. Furthermore, the defendant has absolutely no evidence to prove any of the allegations on the manipulation using proxies.

[62] Upon the defendant's allegation on the plaintiff supposedly secretly profiteering in lucrative service contracts, it was readily admitted by the defendant that he has no evidences and knowledge at all on any of the alleged lucrative service contracts:

Q : … I put it to you that there no lucrative contracts… have you sent along with this document a lucrative contract of a JMC member?

A : We are saying we should not have conflict of interest.

Q : You are saying we have good reasons to believe … that there are lucrative contracts between JMC members and the Plaintiff … did you mention conflict of interest?

A : In another document

Q : You are saying key JMC members have lucrative contracts … show us where in the bundle of documents?

A : No answer

[63] Against the allegation that the plaintiff deliberately increased the maintenance charges, the plaintiff has testified and proven that this allegation in entirety is a facade and ultimately false. Since the completion of the Trade Centre in the year 1997 up to 1 April 2015, the maintenance charges were never increased from the service charges charged in the year 1997 to the year 2000. It remains the same. In fact, in between those years till 2015, the plaintiff has in fact discounted and reduced the rate of maintenance charges.

[64] Thus, in light of all the above, this court finds that all of the relevant contents of the defamatory documents are defamatory in nature in that it excites contempt, hatred, distrust and the lowering of expectations of any reasonable person of a right thinking society.

Second And Third Elements: Reference To The Plaintiff And Publication Of The Defamatory Documents To Third Persons

[65] Considering the concession made by the defendant in his submission in reply, it is unnecessary for this court to go at extreme lengths to discuss whether or not the defamatory statements refer to the plaintiff and whether the defamatory statements were published to third persons. It was conceded by the defendant himself that indeed the defamatory documents expressly refer to the plaintiff and were published to third persons.

[66] The defamatory statements go as far as to explicitly mention the name of the plaintiff. There is no doubt at all that the defamatory statements in the defamatory documents referred to the plaintiff. (see *Knupffer v. London Express Newspaper Limited* [1944] AC 116; *The Institute of Commercial Management United Kingdom v. The New Straits Times Press (Malaysia) Bhd* [1993] 2 CLJ 365).

[67] Regarding the publication of the defamatory documents to third persons, the defendant has readily conceded to the fact that the defamatory documents were at least circulated and received by all owners and tenants of the Amcorp Trade Centre. This in itself is more than sufficient to prove publication. (see *Hebditch v. Macilwaine* [1894] 2 QB 54; *S Pakianathan v. Jenni Ibrahim & Another Case* [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233).

[68] Additionally, it was contended by the plaintiff that the first letter was also published to the Ministry of Housing & Local Government, Datuk Bandar MBPJ, while the second letter was also published to the Commissioner of Buildings (MBPJ), Director General of Ministry of Housing, Minister of Housing & Local Government, Office of the Selangor Menteri Besar.

[69] Although the defendant denies other publications besides the publication to the owners and tenants of the Trade Centre, this court finds that it is more probable than not that the defamatory documents were indeed published to all the other recipients contended by the plaintiff owing to the fact that the Yang Bahagia Datuk Bandar, MBPJ and the Commissioner of Buildings were moved to call a series of meetings regarding the legitimacy of the JMC and the plaintiff's management.

[70] Therefore, in view of the mass of findings above, this court finds that indeed the plaintiff has sufficiently proven all the elements making their case of defamation.

Was There Any Extent Of Truth In The Defamatory Statements To Afford The Defence Of Justification For The Defendant?

[71] It is trite law that the defence of justification depends largely to the truth or the extent of the truth of the defamatory statements. Without the truth or substantial extent of the truth of the defendant's statement, there is verily nothing for the defendant to justify. (See s. 8 of the Defamation Act 1957).

[72] Rightfully so, the plaintiff also referred to the recent decision in the case of *Syarikat Bekalan Air Selangor Sdn Bhd v. Tony Pua Kiam Wee* [2015] 8 CLJ 477 in which the court has held that:

> A defendant will have sufficiently proven the defence of justification if he is able to prove the truth or the substantial truth of his own meanings of the impugned words (see *Moore v. News of the World Ltd* [1972] 1 All ER 915 and *Khalid Yusoff v. Pertubuhan Berita Nasional Malaysia (Bernama) & Ors* [2014] 8 CLJ 337, *Cheah Cheng Hoc & Ors v. Liew Yew Tiam & Ors (No 2)* [2000] 5 CLJ 475)

(See also the case of *Dato' Seri Mohammad Nizar Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor* [2014] 3 CLJ 560).

[73] It is plainly and obviously clear that the defendant in the present case is utterly unable to prove any measure of truth in his defamatory statements. This court has already discussed at length on the failure of the defendant to adduce any evidence to prove any of his statements and also the admission and acceptance on PW1's testimony in utterly failing to challenge the testimony of PW1 proving the facade and falsity of the defendant's defamatory statements. The defendant has in fact admitted to the rebuttal made by the plaintiff's witness in failing to cross-examine his testimony. This is a direct acceptance and admission to the consequential fact of the falsity of all of the defendant's defamatory allegations against the plaintiff.

[74] Thereto, this court has no reservations at all to find that the defendant has absolutely failed to prove a defence of justification and accordingly should not be accorded the defence of justification.

Is The Defendant's Personal Sentiment Against The Plaintiff Falls Within The Arms Of The Defence Of Qualified Privilege?

[75] In another desperate bid to absolve himself from an obvious liability, the defendant has attempted to hide behind the cloak of a supposed qualified privilege and contend that whatever defamatory statements published, was made in the gallant name of public interest and social duty. (See *Shah Latiff Sdn Bhd & Satu Lagi v. Karam Singh Walia & Yang Lain* [2012] 1 CLJ 542; *Adam v. Ward* [1917] AC 309; *Tun Datuk Patinggi Haji Abdul Rahman Ya'akub v. Bre Sdn Bhd & Ors* [1995] 1 LNS 304).

[76] However, the defence of qualified privilege of course would have requisites and qualifications pertinent to be proven before any libellous or slanderous defendant may be afforded such defence. As astutely referred by learned counsel for the plaintiff, the landmark decision in the English case of *Reynolds v. Times Newspapers Ltd* [2001] 2 AC 127 has succinctly laid down the following two requirements:

The Publication Concerned A Matter Of Public Interest

[77] Now, public interest *per se* has been defined in the case of *Sivabalan P Asapathy v. The New Straits Times Press (M) Bhd* [2010] 7 CLJ 885:

> A matter is said to be of "public interest" if the public had an interest in matter as opposed to merely being interested in matters. Being interested in matter would refer to matters which were merely titillating or salacious or gossipy. Matters which were of public interest on the other hand included those which affect the public in terms of governance of their country, their safety, security and right to judge public representatives fairly on the basis of real information.

[78] However, in the present case, this court is entirely doubtful as to the inherent motive behind the defendant's defamatory conduct to be a valorous act with the interest of the public solely in heart and mind of the defendant. As found earlier, it is more probable than not that all the publication of the defamatory documents were instead nothing more than the venting of frustration of a disgruntled unsuccessful candidate who was not voted to become a member of the JMC of which the defendant is clearly desperate to become.

[79] First of all, the defendant has not exhibited any evidence, or any witnesses to define the constituents of the 'public' in the ATCOTA which shares the same interest, worries and sentiments as the defendant. There is no room at all for this court to agree that the ATCOTA represents a sphere of the public when the defendant has not even proven and enlighten this court on the membership and constituents of the ATCOTA, their interests, roles or even ATCOTA's purpose.

[80] Secondly, the defendant is not even a registered owner of any space or lots in the Trade Centre. It is baffling how the defendant could proclaim himself as chairman of the ATCOTA and even stand as candidate to become a member of the JMC. All that was justified by the defendant was that he was a proxy of IK Yeoh Holdings which is the registered owner of the lots in the Trade Centre. However, with the same breath, the defendant admits that there were no proxy forms ever tendered into court to prove such proxy relationship.

[81] Thirdly, the chairmanship of the ATCOTA is merely asserted by lip service. The defendant admits that he had no evidence at all to prove that the defendant has published the defamatory documents with the authority to

represent the ATCOTA. It is even telling to note that the defamatory documents were inserted the defendant's own personal e-mail address and not the address of any society or ATCOTA.

[82] It is verily more probable than not that the defendant was not in any position to hold the duty to the 'public' to publish the defamatory statements. It is more probable than not that the publication of the defamatory documents were made to serve his own twisted selfish interest and personal grudge against the plaintiff who is the successful candidate voted, usurping the defendant's own chance to be a member of the JMC.

[83] It is patently clear that whatever which was published and divulged in the defamatory documents were essentially matters of internal affairs of the plaintiff and the JMC and is not of the concern and interest of the public. They were internal affairs painted to mimic the gloss of public interest.

The Steps Taken To Gather, Verify And Publish The Information Were Responsible And Fair

[84] Clearly at this juncture, it is obvious that the defendant has never proven any sort of care, responsibility and prudence to verify the defendant's false accusations against the plaintiff. The defendant in the present case did not even attempt to verify the truth of their statements prior to its publication. The defendant did not even attempt to prove the truth of his statements besides his insidious technical contention on the marking of the defamatory documents. As for the second requirement, the court in *Khalid Yusoff v. Pertubuhan Berita Nasional Malaysia (Bernama) & Ors* [2014] 8 CLJ 337 has stated that:

> As for the second test, in order to determine whether the defendants practised responsible journalism, the following are the guidelines given in *Reynolds* (*supra*) by the House of Lords:
>
> (i) Seriousness of the allegations;
>
> (ii) Nature of the information and the extent to which the subject matter was of public concern;
>
> (iii) The source of the information;
>
> (iv) The steps taken to verify the information;
>
> (v) The status of the information. The allegation may have already been the subject of an investigation which commands respect;
>
> (vi) The urgency of the matter. News is often a perishable commodity;
>
> (vii) Whether comment was sought from the plaintiff. An approach to the plaintiff will not always be necessary.
>
> (viii) Whether the article contained the gist of the plaintiff's side of the story;

(ix) The tone of the article. A newspaper can raise queries or call for investigation. It need not adopt allegations as statements of fact; and

(x) The circumstances of the publication including timing.

[85] The defendant obviously has gone well below the standards set by the guideline above. The defendant never even gave any source to the defamatory statements into court. The defendant even has the audacity to submit into this court his own "observations" to be viable proof of his allegations (which this court clearly disagrees).

[86] Hereto, it is this court's finding that the defendant has miserably failed to prove the defence of qualified privilege and accordingly should not be accorded the same defence.

Court's Decision

[87] In light of all of the above findings, it is this court's decision that the defendant has ultimately failed to prove his defences and that the plaintiff has successfully proven its case of defamation against the defendant. Thus, this court hereby allows the plaintiffs' action.

Assessment Of Damages

[88] The plaintiff in its amended statement of claim besides claiming general damages in the amount of RM5,000,000, had also urged this court to award the plaintiff exemplary and aggravated in addition to the quantified general damages.

[89] The principle in awarding damages in defamation cases is very well established. It is always an exercise of discretionary jurisdiction. In determining the appropriate amount of damages to be awarded to the plaintiff, this court is guided by many decided cases on considerations ought to be taken into account in assessing damages. (See: (i) *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 3 CLJ 577; [1995] 2 AMR 1776, the Federal Court set out the factors to be considered in assessing damages in a defamation case, namely; (1) the position and standing of the plaintiff; (2) the extent of the publication; (3) the mental distress, hurt, anxiety and mental anguish caused to the plaintiff as a result of the libel; (4) the uncertainty undergone in litigation; (5) conduct of the defendants from the time of the libel down to the very moment of the verdict; (6) the absence or refusal of any correction, retraction or apology; (ii) *Datuk Harris Mohd Salleh v. Abdul Jalil Ahmad & Anor* [1983] 2 CLJ 211; [1983] CLJ (Rep) 521; [1984] 1 MLJ 7; (iii) *Tan Sri Dato' Vincent Tan Chee Yioun v. Haji Hasan bin Hamzah & Ors* [1995] 1 CLJ 117; [1995] 1 MLJ 39; (iv) *Cassell & Co v. Broome* [1972] AC 1027).

[90] In the present case, the plaintiff had specifically pleaded general damages in the sum of RM5 million. It must be noted that the defendant had never at any point of time challenged the RM5 million claim put forth by the plaintiff in its amended statement of claim. Even during the trial, the defendant has never questioned the plaintiff with regard to the amount of general damages claimed by the plaintiff. Having no benefit of the defendant's contention, challenge and evidence on quantum, this court is left with no alternative but to allow the plaintiff's claim to its full extent as the plaintiff has on their part contended on its reputation and the damage inflicted on its reputation by the defendant's defamatory conducts. Having considered all these factors, this court finds RM5,000,000 in global damages (general, exemplary and punitive) is an appropriate amount to be awarded to the plaintiff.

On The Issue Of Costs

[91] Counsel for the plaintiff had briefly submitted to this court that the costs of this action should be in the region of RM20,000. Counsel for defendant had conceded to the amount. Hence, this court hereby orders that the defendant do pay RM20,000 to the plaintiff in costs.